IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR.

DB CIVIL WRIT PETITION NO. 4117/2002.

GULAB CHAND & OTHERS.

VERSUS

STATE OF RAJASTHAN & OTHERS.

Date of Judgment : 2nd May, 2007.

PRESENT

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE R.S. CHAUHAN

Mr. Ganesh Meena for the petitioners.
Mr. R.S. Rathore, Additional Advocate General for the respondents Nos. 1 to 4.
Mr. S. Kasliwal for the respondent No.6.

Oral Judgment (Per R.M. Lodha, J.)

The three villagers residing in Village Maujpur, Tehsil Mahua, District Dausa have filed this writ petition in the nature of public interest litigation. According to them the interest of general public of Village Maujpur has been seriously affected by the allotment of two hectares of land to the Indian Oil Corporation out of 'Charagah land' bearing Khasra No. 222 ad-measuring 6.13 hectares situate at Village Maujpur.

2. Section 5(28) of the Rajasthan Tenancy Act, 1955 (for

short, 'Act of 1955') defines “pasture land” to mean land used for the grazing of the cattle of a village or villages or recorded in settlement records as such at the commencement of that Act or thereafter reserved as such in accordance with the rules framed by the State Government.

3. In exercise of the powers conferred by Section 257 of the Act of 1955, the State Government made the Rules called Rajasthan Tenancy (Government) Rules, 1955 (for short, 'Rules of 1955'). Chapter II thereof is to give effect to the provisions of Section 5(28) of the Act of 1955. Rule 7 therein reads thus :-

> “7. Allotment or setting apart of Pasture Land -)1_The Collector may, in consultation with the Panchayat, change the classification of any pasture land, as defined in sub-section (28) of Section 5 of the Act or any pasture land set apart under section 92 of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act of 1956), as unoccupied culturable Government land (Sawai Chak), for allotment for agricultural or any non-agricultural purposes :
>
> Provided that in case where the area of the land sought to be so allotted or set apart exceeds 4 hectares, the Collector shall obtain prior permission of the State Government :
>
> Provided also that any such land, falling within the boundary limits of the Jaipur Region as defined in the Jaipur Development Authority Act, 1982 (Act No. 25 of 1982) or within the periphery of 2 kms. Of a municipality, shall not be allotted except for the

purpose of a public utility institution or for expansion of abadi.

(2) Where classification of any pasture land is changed under sub-rule (1), the Collector may set – apart an equal area of unoccupied culturable Government land, if available as pasture land in the same village."

4. The State Government also made the Rules entitled 'The Rajasthan Land Revenue (allotment, conversion and regularisation of agricultural land for constructions of cinemas and establishment of petrol pump or medical facilities) Rules, 1978' (for short, 'Rules of 1978').. Rule 5 of the Rules of 1978 provides for classes of land that may be allotted for the constructions of cinemas or establishment of petrol pump. It reads thus :-

"5. Classes of land which may be allotted. - Land for the construction of cinema or establishment of a petrol pump or medical facilities may be allotted by way of lease out of the following categories of unoccupied Government land namely--

(a) Unculturable Land classified as 'Gair mumkin' or 'Ujar':

Provided that the land used as cremation ground or burial ground, grazing grounds or pasture land and the 'pal' or embankment of a tank the water of which is used by the village cattle, even though classified as unculturable shall not be allotted:

(b) Where suitable land classified as unculturable is not available, culturable waste land or land classified as banjar:

(c) Where land of the categories mentioned in the preceding clauses are not available, the lowest class of barani land available.

Provided that no irrigated land classed as chahi, nahri, or talabi shall be allotted in any case, except with the permission of the State Government."

5. Relying upon Rule 5 of the Rules of 1978, the petitioners allege that the pasture land could not have been allotted for the establishment of the petrol pump. According to them the order dated 22nd of January, 2001 changing the classification of two hectares of pasture land by the District Collector, Dausa is also illegal for want of any consultation with the concerned Gram Panchayat.

6. There are three counter-affidavits on record. The respondents Nos. 1 to 4 filed their counter on 22nd of December, 2006. According to them the allotment of two hectares of land for the establishment of petrol pump to the Indian Oil Corporation (respondent No. 6) have been made after following the due procedure. They have also stated that pursuant to the order dated 22nd of January, 2001, the respondent No. 6 (Indian Oil Corporation) paid a sum of Rs. 17,56,000/- and the possession has already been given to them. The Gram Panchayat (respondent No.5) in their separate counter has stated that since no petrol pump facilities were available

to the villagers within the area of 20 kms. and considering the difficulties of the residents of that area and on their demand, the land has been allotted to the Indian Oil Corporation. They have stated that on 20th April, 2002, the Gram Panchayat, Maujpur passed the resolution and, accordingly, No Objection Certificate was given by them to the District Magistrate, Dausa. The allottee – Indian Oil Corporation in their return justified the allotment by submitting that the land has been allotted by the Collector, Dausa under the Rules of 1978 after due observance of the procedure and no illegality has been committed. It is also stated that after taking possession of the subject land, the retail outlet has already been commissioned and the same is functioning.

7. Rule 7 of the Rules of 1955 permit change of classification of the pasture land by the Collector for allotment of agricultural or for non-agricultural purpose. The word “may” in sub-rule (1) of Rule 7 regarding consultation with the Panchayat cannot be read as “shall” as suggested by the counsel for the petitioners. The word “may” in its ordinary meaning indicates the directory nature of the provision but in a given context, it can be read as 'shall'. But for that, there must be sufficient indication to hold so. We find no indication in Rule 7 to read the word “may” as “shall”. More so, the language of sub-rule (1) of Rule 7 does not suggest that it is in mandatory form. Rather, the

framers of the Rules were clear in mind and provided that where the area of the land to be allotted exceed four hectares, the Collector shall obtain prior permission of the State Government. The first proviso appended to sub-rule (1) of Rule 7 is couched in directory form in so far as the consultation by the Collector with the Gram Panchayat for change of the classification of the pasture land for allotment for agricultural or non-agricultural purpose is concerned. Rule 7, thus, in our view does not mandate the Collector to consult the concerned Gram Panchayat in all cases of changing the classification of the pasture land for allotment for agricultural or non-agricultural purpose. The order of the Collector dated 22nd of January, 2001 does not show any non-observance of Rule 7. In any case, there has been ex-post facto consultation with the Gram Panchayat by the Collector.

8. The contention that under Rule 5 of the Rules of 1978, the pasture land could not have been alloted for petrol pump is founded on the erroneous premise. The petitioners have assumed that two hectares of the land allotted to the Indian Oil Corporation for the establishment of petrol pump is pasture land. In fact it is not so. By the order dated 22nd of January, 2001, the Collector, Dausa, in exercise of his powers under Rule 7 of the Rules of 1955 first changed the classification of the pasture land to the extent of two hectares in Khasra No. 222 situate in Village Maujpur for the allotment for non-

agricultural purpose i.e. establishment of petrol pump and then allotted the said land to Indian Oil Corporation.

9. We, thus, find that the allotment of two hectares of land out of Khasra No. 222 situate at Village Maujpur, Tehsil Mahua, District Dausa to the Indian Oil Corporation Ltd., does not suffer from non-observance of law. Consequently the writ petition has to be dismissed and we order accordingly. No costs.

R.S. CHAUHAN, J. R.M. LODHA, J.

MRG.